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Amicus Brief: Commonwealth v. Nixon

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SUMMARY OF ARGUMENT

The criminal statutes that Mr. and Mrs. Nixon violated make no exception for "mature minors" or for religious belief. This Court could not, of course, carve an exception out of these statutes based simply on the kind of policy arguments that fill most of Appellants' Brief, which are in any event deeply flawed. To uphold the Nixons' appeal, this Court would have to conclude that "mature minors" have a constitutional right to exemption from any and all laws of the Commonwealth designed to protect children. Such a conclusion would be unprecedented, unwarranted, and exceedingly unwise. In addition, the Court would have to conclude that in this case the trial court was required to make a post-mortem determination of Shannon Nixon's maturity, based on the say-so of her parents and members of their religious community. That result would be absurd.

Under Pennsylvania law, all parents have a vital legal responsibility to secure necessary medical care for their children, regardless of the children's expressed wishes. Mr. and Mrs. Nixon chose to ignore that legal responsibility even after having been convicted previously for causing the death of another child. This Court must ensure that this time the Nixons, and all other parents inclined to flout this legal obligation, get the message.

ARGUMENT

The new rule of law Appellants ask this Court to legislate would be unprecedented and disastrous. It would encourage parents to pressure their seriously ill children into saying that it is they who want to refuse medical care, thereby adding a tremendous psychological burden to the terrible suffering the children are already enduring. The Pennsylvania Legislature has imposed responsibility on parents to ensure that their children receive medical care, and there the responsibility must remain. Mr. and Mrs. Nixon should be ashamed for attempting to shift to their deceased daughter responsibility for the choices they made about how to govern her life.

What were the consequences of Appellants' refusal to fulfill their legal obligation as parents? In its evaluation of this case, this Court may not, of course, assume that Shannon Nixon had spiritual interests at stake in the decision regarding her medical care. For the Court to do so, it would have to declare the truth of certain religious beliefs, which it may not do. See **County of Allegheny v. ACLU, 492 U.S. 573, 593-94, 109 S.Ct. 3086, 3101, 106 L.Ed.2d 472 (1989)** ("The Establishment Clause, at the very least, prohibits government from appearing to take a position on questions of religious belief.") In our society, the state does not make judgments

about individuals' spiritual interests, whether or how they will attain salvation, or whether they are right with God. From this Court's perspective, then, the only consequences for Shannon of not receiving medical care were horrible suffering and death.

The Court must therefore answer two questions: 1) Do parents as a general rule have a legal obligation to prevent such harm to their minor children whenever possible, regardless of the children's wishes and regardless of the children's age? 2) Do the religious beliefs of parents or children diminish that obligation? Under Pennsylvania law, the answer to the first question is quite clearly "yes." Under the Constitution of the United States and the laws of the Commonwealth of Pennsylvania, the answer to the second question is just as clearly "no."

I. PENNSYLVANIA LAW IMPOSES ON PARENTS AN OBLIGATION TO SECURE MEDICAL CARE FOR A SERIOUSLY ILL CHILD, WITHOUT EXCEPTION FOR THE WISHES OF THE CHILD.

A. Appellants Had A Clear Legal Obligation To Ensure That Their Daughter Received Medical Care.

Pennsylvania's Child Protective Services Law imposes on all parents a legal obligation to provide proper care for their children. It defines as child abuse -- a violation of

legal obligations that can trigger loss of parental authority and even termination of a parent-child relationship -- "the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning." **23 Pa. C.S.A. § 6303(b)(1)(iv).** There can be no question, and Appellants do not dispute, that the Nixons' failure to secure medical care for Shannon was presumptively child abuse, and a violation of their legal obligations as parents.

In addition, the laws of Pennsylvania make it a criminal offense for parents to cause a child to die or otherwise to endanger a child's welfare by failing to secure necessary medical care for the child. See **18 Pa. C.S.A. § 2504** (involuntary manslaughter); **18 Pa. C.S.A. § 4304** (endangering the welfare of a child); and **Commonwealth v. Barnhart, 345 Pa. Super. 10, 497 A.2d 616 (1985), appeal denied, 517 Pa. 620, 538 A.2d 874 (1988), cert. denied sub nom. Barnhart v. Pennsylvania, 488 U.S. 817, 109 S.Ct. 55, 102 L.Ed.2d 34 (1988).** There can be no question, and Appellants do not dispute, that the Nixons' failure to secure medical care for Shannon was presumptively a serious criminal offense.

B. The Expressed Wishes of a Minor Child Not to Receive Medical Care Do Not, And Should Not, Diminish Parents' Legal Responsibility

Throughout its laws governing children's lives, including the criminal child endangerment law and the Child Protective Services Law, the Pennsylvania Legislature has identified the terms "minor" and "child" with a person under the age of eighteen. See, e.g., **18 Pa. C.S.A. § 4304** (child endangerment); **23 Pa. C.S.A. § 5101(a),(b)** (age for entering contracts and for suing or being sued); **23 Pa. C.S.A. § 5302** (custody of children); **23 Pa. C.S.A. § 5501** (parental liability for tortious acts of children); **23 Pa. C.S.A. § 6102(a)** (abuse of family members); and **23 Pa. C.S.A. § 6303(b)(1) (i), (ii), (iii)** (child protection). Neither the criminal statutes under which the Nixons were convicted nor the Child Protective Services Law make any mention of the wishes of children, whether "mature" or otherwise. In imposing a legal obligation on parents to secure appropriate medical care for their children, the Legislature made no exception for parents whose children are seventeen, or sixteen, or fifteen, or any other age, and who express a preference not to receive medical care. The Legislature imposed this obligation of care on parents until their children reach the age of eighteen, period.

Appellants do not contend that the Pennsylvania Legislature has created a "mature minor" exception to parents' statutorily-imposed duties. Rather, they contend that this Court must create one. Appellants advance two arguments to support this contention. First, Appellants argue that because some other States have a mature minor rule for some medical care decisions, Pennsylvania must adopt one for child abuse cases. Second, they argue that minors have a constitutional privacy right that entails a right to refuse necessary medical care and that obviates parents' legal obligations. Both arguments are deeply flawed.

1. Appellants' claim that mature minors should be able to refuse medical care rests on illogic and a misunderstanding of the Court's role.

Appellants cite to adoption of a mature minor rule in certain medical contexts in some States, and contend that this Court should legislate such a rule for child abuse cases. Implicit in Appellants' argument are the premises 1) that if a mature minor rule is a good idea in some contexts, then it must be a good idea in all contexts, and 2) that if something is a good idea, then the courts of Pennsylvania must create a law to implement it. Both premises are false.

As Appellants state repeatedly in their Brief, some States allow minors who demonstrate the requisite capacity and

knowledge of consequences "to consent to" certain forms of medical treatment themselves, without needing to obtain parental authorization. See, e.g., **Brief for Appellants at 11, 12, 13, 15, 16, 17, 18, 21.** The kinds of medical treatment some States empower mature minors to authorize are principally abortion, treatment for sexually transmitted disease, and treatment for alcohol and drug addiction. These are forms of medical care those States believe can be very beneficial to minors, but which minors might never receive if forced to inform their parents of their situation and secure their parents' consent. The legislatures and/or courts of those States have therefore empowered minors to authorize these forms of treatment themselves in some cases, so that they can protect and promote their physical well being and preserve for themselves an open future, an adulthood with a wide range of opportunities to make a life for themselves. The mature minor rule is designed to facilitate placement of minors in the care of medical professionals, who have a legal and professional obligation to promote the minors' welfare.

To conclude from these instances of authorizing minors to consent to beneficial medical care that many States think it a good idea to enable minors to refuse needed medical treatment is to elevate illogic to an art form. The mature minor rule some States have adopted does not reflect a judgment that some

minors should be empowered to do whatever they want with their lives, or that some minors should be treated in every respect like adults. Rather, it reflects a judgment only that sometimes it is necessary, in order for minors to receive the medical care they need, to circumvent parental authority. Cf. **Parents United For Better Schools, Inc. v. School District Of Philadelphia Board of Education, 978 F.Supp. 197, 208, 209-210 (E.D. Pa. 1997)** (discussing the purposes of the Minors' Consent Act, **35 Pa. Stat. Ann. §§ 10101-10105**, and discussing the rationales underlying minors' limited constitutional privacy right in connection with reproductive health care).

Appellants cite just two instances of a State ostensibly allowing a mature minor to refuse medical treatment -- one judicial decision in the State of Illinois, **In re E.G., 133 Ill.2d 98, 549 N.E.2d 322 (1989)**, and one 1972 judicial decision in Pennsylvania, **In re Green, 448 Pa. 338, 292 A.2d 387 (1972)**. See **Brief for Appellants at 14, 22-23.**[1] Neither of those decisions should influence the Court's reasoning, as explained below. Oddly, Appellants entirely ignore in their

[1] Appellants also discuss at length this Court's decision in **In re Fiori, 543 Pa. 592, 673 A.2d 905 (1996)**, a case addressing the patently dissimilar situation of withdrawing life support from an adult in a persistent vegetative state. See **Brief for Appellant at 24, 29-31.** Appellants rely heavily on this case despite the pains this Court took to emphasize that "our holding today applies only to situations where the individual in question was once a competent adult, but is now in a permanent vegetative state." **543 Pa. at 608, 673 A.2d at 913.**

Brief a 1992 ruling of the Superior Court of Pennsylvania, upheld by this Court, rejecting the mature minor defense in circumstances similar to this case. See **Commonwealth v. Cottam, 420 Pa.Super. 311, 616 A.2d 988 (1992), appeal denied, 535 Pa. 673, 636 A.2d 632 (1993).**

E.G., supra, the Illinois decision cited by Appellants, involved a minor just under the age of eighteen who had leukemia and who concurred with her mother in refusing blood transfusions, for religious reasons. The transfusions would have prolonged the minor's life, but "[t]he long-term prognosis [was] not optimistic, as the survival rate for patients such as E.G. is 20 to 25%." **133 Ill.2d at 102, 549 N.E.2d at 323.** The Illinois court indicated that there is no constitutional right to refuse medical treatment, for adults or minors. **133 Ill.2d at 108, 549 N.E.2d 326.** But a majority of the court discerned such a right for adults in the common law of the State of Illinois, and without analysis decided to extend that right to mature minors, simply because it could not see any reason not to. **133 Ill.2d at 109; 549 N.E.2d at 326.** Certainly there are reasons not to, as discussed below, so either the case was poorly briefed or the court chose to ignore reasons proffered by the State. In fact, the court seemed quite confused as to whom it was according a right, appearing to conflate the right of the minor with the right of

the parent. The court suggested that if the parent wanted the minor to receive medical care, then she would have to receive it. **133 Ill.2d 112, 549 N.E.2d at 328.** The minor's "right" thus appears not to have been much of a right at all.

Appellants concede that **Green, supra,** the 1972 Pennsylvania decision, is inapposite to the present case because "**Green** dealt only with a non-fatal situation, not health care decisions in life-threatening situations." **Brief for Appellant at 23.** In fact, in **Green**, the medical care decision was of little urgency, and on medical grounds alone was a toss-up. The Supreme Court found that it could not say that the operation was required in order to protect the welfare of Ricky Green. **448 Pa. at 348, 292 A.2d at 392.** Ricky Green had paralytic scoliosis, which caused a very gradual deterioration in his physical condition, curvature of the spine. **448 Pa. at 340, 292 A.2d at 388.** Doctors proposed a spinal fusion to relieve the condition somewhat, while cautioning Ricky and his mother that the operation would be "dangerous." **448 Pa. at 341, 292 A.2d at 388.**

The Supreme Court first ruled, in a 4-3 decision, that Ricky's mother had a free exercise right to refuse the blood transfusion, at least so long as Ricky did not disagree with his mother. **448 Pa. at 348-49, 292 A.2d at 392.** After a remand to determine whether Ricky did wish to receive the

operation, the Supreme Court ruled, two months shy of Ricky's eighteenth birthday, that the operation need not be performed, since Ricky also preferred, in large part for purely medical reasons, not to undergo the operation. **In re Green, 452 Pa. 373, 307 A.2d 279 (1973).** It is not clear, then, that the outcome of **Green** was based on any right of a mature minor to refuse treatment. Rather, the Court implied that Ricky had a right to consent to treatment if he so desired, a right that would override the mother's religious objection to transfusions. And the Court simply concluded that Ricky did not so desire.

In any event, the criminal provisions under which Appellants were convicted were not at issue in **Green**, and those criminal provisions independently impose a critical legal duty of care on parents, one so important as to be backed by criminal sanctions. In addition, the Pennsylvania Legislature passed the criminal child endangerment law between the times of the first and second decisions of the Supreme Court in the **Green** litigation, see **P.L. 1482, No. 334, § 1 (Dec. 6, 1972)**, and enacted the Child Protective Services Law long after the **Green** litigation, see **P.L. 1240, No. 206, § 2 (Dec. 19, 1990)** (original enactment) and **P.L. 1292, No. 151, § 1 (Dec. 16, 1994)** (amending law). The Legislature, although undoubtedly aware of **Green** and cognizant that situations of

that sort could arise with some regularity, chose not to include a mature minor exception in either of these laws.

Cottam, supra, a 1992 decision of the Superior Court of Pennsylvania, was like this proceeding an appeal from a criminal conviction of parents who, for religious reasons, caused a child to die from lack of necessary care. The Cottams withheld food, rather than medical care, from their fourteen year-old son, and he died as a result. The Cottams argued on appeal that they did not have a legal duty to provide food to their son, because he was "of sufficient intellect and maturity" to make decisions for himself and he had "voluntarily refrained from eating based on their religious beliefs." **420 Pa. Super. at 333, 616 A.2d at 999.**

The Superior Court granted that a child of sufficient intellect and maturity "can assert her own religious identity" in the very limited sense of being able to decide such things as which of her parents' different churches, in a post-divorce context, she would attend – a decision of no consequence for her health and well being from the state's perspective. **420 Pa. Super. at 334-35, 616 A.2d at 999-1000 (citing Zummo v. Zummo, 394 Pa. Super. 30, 574 A.2d 1130 (1990)).** But the court stated categorically that children's ability to assert a religious identity in that limited sense "has no bearing" on whether they should be permitted to refuse to eat, and "does

not dispel [parents'] duty while the children are in their care, custody and control to provide them with parental care, direction and sustenance." **420 Pa. Super. at 335, 616 A.2d at 1000.** The Superior Court therefore upheld the parents' conviction.

In sum, then, precedent does not support Appellants' plea for a mature minor rule in contexts like the present one involving refusal of needed medical treatment. Appellants also appeal, however, to this Court's sense of rationality. They suggest that drawing a line between eighteen year-olds and sixteen or seventeen year-olds, in deciding when individuals become fully in control of their own destiny, is simply arbitrary. There is no significant difference, they assert, between a girl on the cusp of her seventeenth birthday and an eighteen year-old, so that if the Commonwealth allows eighteen year-olds to make tragic decisions, it should also allow sixteen and seventeen year-olds to do so as well. See, e.g., **Brief for Appellant at 25-26, 31.**

One could argue, of course, that even an eighteen year-old should not be empowered to refuse necessary and effective medical care, and that only after, say, age twenty-one should individuals be able to make such a fateful choice.[2] Eighteen

[2] Indeed, this Court has indicated that, as is true is some other States, in Pennsylvania there may in some circumstances be a legal duty to secure medical care for a seriously ill adult spouse even

year-olds, especially those raised in insular subcultures, are typically just beginning to mature and are getting just their first glimpse of alternative ways of life and worldviews that are open to them, their first sense that they can chart their own future. But the Pennsylvania Legislature has made a judgment that eighteen, the age at which most offspring leave the sheltered environment of their upbringing to explore the outside world, is a significant milestone in an individual's life. It marks entrance into adulthood, a status that entails the right to make (nearly) all the decisions about one's own life, foolish or otherwise. On the basis of that judgment, the Commonwealth does not permit persons under age eighteen to do many things adults are permitted to do, such as purchase tobacco or cigarettes, **18 Pa. C.S.A. § 6305, 18 Pa. C.S.A. § 6306;** purchase or possess firearms or explosives, **18 Pa. C.S.A. § 6110.1, 18 Pa. C.S.A. § 6302;** have sexual relations with other persons, **18 Pa. C.S.A. § 6301;** pose for pornographic pictures, **18 Pa. C.S.A. § 6312;** and purchase or consume alcohol, **18 Pa. C.S.A. § 6308.** In fact, the legal age for purchasing and consuming alcohol in Pennsylvania is twenty-one. **18 Pa. C.S.A. § 6308.** None of these restrictions on the freedom of minors contains a mature minor exception. A

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where the spouse expresses religious opposition to receiving medical care. See **Commonwealth v. Konz, 498 Pa. 639, 644-46, 450 A.2d 638, 641-42 (1982).**

person under eighteen cannot even get a tattoo in Pennsylvania without parental consent. **18 Pa. C.S.A. § 6311.** Yet Appellants contend that minors should have the power to refuse life-saving medical care.[3]

Finally, not only are Appellants thoroughly unconvincing in arguing that letting minors refuse medical care would be good policy, but they also fundamentally misunderstand the function of the courts in this situation. Their lengthy plea that this Court take notice of what other States have done is simply inapt. For even if statutes or court decisions in some States did reflect a judgment that some minors should be able to do whatever they want with their bodies, which they do not, and even if that were a sound judgment, which it would not be, it is, of course, not the office of this or any other court to create an exception to duly-enacted statutes based on a supposition that an exception would be a good idea.

Likewise, even if the Legislature acted arbitrarily in imposing parental obligations until a child turns eighteen, rather than until a child turns sixteen, which it did not, it would not be for the courts to rewrite the Pennsylvania statutes to establish a different age of emancipation. In

[3] In support of their position that mature minors should be treated like adults in this context, Appellants also point out that the criminal justice system sometimes treats minors like adults. See, e.g., **Brief for Appellants at 15, 18-20.** But the criminal justice

contrast, the courts in other States that have adopted a mature minor rule, for purposes of allowing minors to consent to treatment, were creating an exception to a common law doctrine -- namely, that requiring parental consent to treatment of minors. See, e.g., **Belcher v. Charleston Area Medical Center, 188 W.Va. 105, 116, 422 S.E.2d 827, 838 (1992)** (referring to "our adoption of the mature minor exception to the common law rule of parental consent"). Appellants' call for this Court to create a mature minor exception to the involuntary manslaughter and child endangerment statutes is, quite simply, misdirected.

2. Children's constitutional privacy right does not and should not include a right to refuse necessary and effective medical treatment.

Appellants contend, secondarily, that minors have a constitutional right of privacy that entails a right to refuse necessary medical care. They cite numerous decisions of the United States Supreme Court and of this Court recognizing a constitutional right to privacy. **Brief for Appellants at 26-29.** That right, originally conceptualized as arising from the penumbra of several constitutional rights, has more recently been conceptualized as a substantive due process right. See,

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system's treatment of minors is motivated primarily by public demands that have nothing to do with respecting minors' autonomy.

e.g., **Planned Parenthood v. Casey, 505 U.S. 833, 851, 112 S.Ct. 2791, 2807, 120 L.Ed.2d 674 (1992).** The constitutional protection afforded in the cases Appellants cite does encompass a right to substantial autonomy in matters concerning one's body and one's healthcare.

All of the decisions Appellants cite, however, involved adults. And even in the context of decision making by competent adults, the courts have not made the right unlimited. Most recently, in **Washington v. Glucksberg, 521 U.S. 702, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997),** the United States Supreme Court emphasized, in holding that even terminally ill competent adults do not have a right to complete control over decisions concerning their physical well being, that although "many of the rights and liberties protected by the Due Process Clause sound in personal autonomy [this] does not warrant the sweeping conclusion that any and all important, intimate, and personal decisions are protected." **521 U.S. at 727, 117 S.Ct. at 2271.**

The Court in **Glucksburg** held that States have a commanding interest in preserving human life, even with respect to terminally ill adults. **521 U.S. at 728, 117 S.Ct. at 2272.** That interest is indisputably even more compelling with respect to minors who can lead long, healthy, and fulfilling lives if they receive proper medical care. **Cf. 521**

U.S. at 731-32, 117 S.Ct. at 2273 (holding that States also have an important interest "in protecting vulnerable groups . . . from abuse, neglect, and mistakes" and in "protecting the vulnerable from coercion"). See also **Walker v. Superior Court, 47 Cal.3d 112, 139, 763 P.2d 852, 870 (Cal. 1988), cert. denied, 491 U.S. 905, 109 S.Ct. 3186, 105 L.Ed.2d 695 (1989)** ("Imposition of felony liability for endangering or killing an ill child by failing to provide medical care furthers an interest of unparalleled significance: the protection of the very lives of California's children, upon whose 'healthy, well-rounded growth . . . into full maturity as citizens' our 'democratic society rests, for its continuance.'" (quoting **Prince v. Massachusetts, 321 U.S. 158, 168, 64 S.Ct. 438, 443, 88 L.Ed. 645 (1944)**).

Appellants correctly point out that children are persons, and that children have constitutional rights. But it is also true that children's constitutional rights are not identical to adults' constitutional rights. See, e.g., **Planned Parenthood v. Danforth, 428 U.S. 52, 74, 96 S.Ct. 2831, 2843, 49 L.Ed.2d 788 (1976)** (finding that States have "broader authority to regulate the activities of children than of adults"). And they should not be. In some respects children's rights should be greater, or simply different. For example, children have rights to education and to assistance

from others in securing medical care, even though adults do not have comparable rights. This case is very much about that latter right. In other respects, such as the right to self-determination, children's rights must be lesser. It would be absurd, for example, to say that children's rights relating to sex or gun possession should be identical to those of adults.

In our legal system, individuals enjoy a right to full-fledged autonomy when they are presumptively competent to make free and informed decisions about the many aspects of their lives, including their healthcare. The notion that teenage children in general, including those being raised in an insulated religious community and indoctrinated from infancy to oppose medical care, are fully competent and free and fully informed with respect to refusing critical medical treatment is preposterous. The trial court did not find any of these things to be true of Shannon Nixon.[4] And it would be absurd for this Court to legislate that seriously ill children expressing a desire not to receive medical assistance should go through legal proceedings to determine whether they are sufficiently competent, free of parental control, and informed that they should be empowered to sacrifice their physical well being, and indeed to give up their lives.

[4] The Superior Court was therefore mistaken in characterizing Shannon as a mature minor; the trial court declined to make such a finding. See **Brief for Appellant at 6, 22.**

In any event, Shannon Nixon never had the opportunity to go through such a proceeding. Mr. and Mrs. Nixon chose not to inform public officials of their daughter's illness until after she was dead. And, of course, as the trial court in this case must have realized, it would be even more absurd for judges to make post-mortem determinations of maturity, without ever laying eyes on the minor, as Appellants asked the trial court to do.

It would be offensive to deny children certain rights simply because they are politically powerless or because they have historically been treated with less than the respect they are due as persons. But it is entirely appropriate to deny children certain rights when that is necessary to ensure their healthy development into autonomous adults. And what is the harm in doing so in this context? Should this Court conclude that a sixteen year-old girl would be harmed by having her life preserved against her will? On what basis could the Court reach that judgment? Certainly none that does not entail accepting the parents' religious beliefs, or what the parents claim were Shannon's religious beliefs, as true, which this Court may not do. See **County of Allegheny v. ACLU, 492 U.S. 573, 593-94, 109 S.Ct. 3086, 3101, 106 L.Ed.2d 472 (1989).**

On the other hand, conferring this right on minors would have tremendous costs – more suffering, more life-long impairments, and more loss of young lives. And presumably the right would be operative to the same degree in cases where parents wanted their child to receive medical care. A minor would be no less mature simply because she disagrees with her parents; in fact, disagreement might signal greater independence. And there are many reasons why a teenager might decide she does not want to undergo a medical procedure, including reasons having nothing to do with the efficacy of the procedure, and courts would be hard-pressed to say that those reasons are less rational than religious belief.

Moreover, if a minor is entitled to decide that she will not receive necessary medical care, would she not also be entitled to make the less fateful decisions to smoke, consume alcohol, and pose for pornographic pictures? Appellants' position leads ineluctably to that result. "The mere novelty of such a claim is reason enough to doubt that `substantive due process' sustains it." **Reno v. Flores, 507 U.S. 292, 303, 113 S.Ct. 1439, 1447, 123 L.Ed.2d 1 (1993).**

II. THE RELIGIOUS BELIEFS OF APPELLANTS, AND THE ALLEGED RELIGIOUS BELIEFS OF THEIR DAUGHTER, IN NO WAY DIMINISHED APPELLANTS' LEGAL OBLIGATION AS PARENTS OR THEIR CRIMINAL LIABILITY FOR FAILING TO FULFILL THAT OBLIGATION.

Appellants do not explicitly advance a claim of religious freedom, for themselves or for their deceased daughter. Yet they repeatedly emphasize that their objection to medical care, and the alleged objection of Shannon Nixon to medical care, were based upon religious beliefs. At one point they do go so far as to assert that Shannon's "conscious choice" was "founded upon her constitutional right to exercise her religion." Brief for Appellants at 31. They undoubtedly hope that this Court will be influenced by the religious dimension of their case, even though they have asserted no legal claim on that basis. Lest there be any uncertainty, such a claim would be unsupportable. Neither the religious beliefs of Appellants nor the alleged religious beliefs of their daughter in any way diminished the legal obligation Appellants had to secure medical care for Shannon.

A. Appellants' Religious Beliefs Did Not Lessen Their Legal Obligation.

The criminal statutes under which the Nixons were convicted contain no mention of spiritual treatment or religious beliefs. The Pennsylvania Legislature has not

created an exemption from criminal liability for involuntary manslaughter or child endangerment for parents whose religious beliefs conflict with their legal duties. Nor could it do so consistent with the United States Constitution. Application of these laws in the context of child rearing is an important legal protection for children, and to deny that protection to certain children, simply to accommodate the religious preferences of parents, would violate the Fourteenth Amendment right of those children to equal protection of the law. See **State v. Miskimens, 22 Ohio Misc.2d 43, 46-47, 490 N.E.2d 931, 935-36 (Ohio Ct. Common Pleas 1984)**(invalidating on equal protection grounds a religious exemption to Ohio's medical neglect law); **Brown v. Stone, 378 So.2d 218 (Miss. 1979)** (striking down on equal protection grounds a religious exemption to a state law requiring vaccination of all school children); **Dwyer, "The Children We Abandon: Religious Exemptions to Child Welfare and Education Laws as Denials of Equal Protection to Children of Religious Objectors," 74 N.C. L.Rev. 1321 (1996).**

In addition, this Court has upheld a decision of the Superior Court of Pennsylvania decreeing that the Free Exercise Clause in no way compels the state to create any exemption from, or to diminish liability under, its involuntary manslaughter or child endangerment statutes for

parents who oppose medical care for their children on religious grounds. **Commonwealth v. Barnhart, 345 Pa.Super. 10, 22-26, 497 A.2d 616, 623-26 (Pa. 1985), appeal denied, 517 Pa. 620, 538 A.2d 874.** See also **Wisconsin v. Yoder, 406 U.S. 205, 230, 92 S.Ct. 1526, 1540, 32 L.Ed.2d 15 (1972)** (emphasizing, in holding that Amish parents were entitled to an exemption from State compulsory school attendance laws, that the Court believed this would not result in any harm to the children); **Jehovah's Witnesses v. King County Hospital, 278 F.Supp. 488 (W.D. Wash. 1967), affirmed per curiam, 390 U.S. 598, 88 S.Ct. 1260, 20 L.Ed.2d 158 (1968)**(ordering blood transfusions for child over religious objection of Jehovah's Witness parents); **Prince v. Massachusetts, 321 U.S. 158, 170, 64 S.Ct. 438, 444, 88 L.Ed. 645 (1944)** ("Parents may be free to become martyrs themselves. But it does not follow they are free . . . to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves."). Though Appellants do not cite **Barnhart** in their Brief, it may explain why they do not claim that they had any right, as a matter of religious freedom, to do what they did.

Pennsylvania's Child Protective Services Law does contain a special provision for situations of this kind, but that provision in no way exempts any parents from the legal

obligation to take steps leading to medical care for a sick child. **23 Pa. C.S.A. § 6303** provides:

> If, upon investigation, the county agency determines that a child has not been provided needed medical care or surgical care because of seriously held religious beliefs of the child's parents, guardian or person responsible for the child's welfare, which beliefs are consistent with those of a bona fide religion, the child shall not be deemed to be physically or mentally abused. The county agency shall closely monitor the child and shall seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health. In cases involving religious circumstances, all correspondence with a subject of the report and the records of the Department of Public Welfare and the county agency shall not reference "child abuse" and shall acknowledge the religious basis for the child's condition, and the family shall be referred for general protective services, if appropriate. (emphasis added)

The clear purpose of this statutory provision is to ensure that children in these situations do receive medical care, despite the religious views of their parents, while at the same time accommodating parents just to the extent of relieving them of the need to sign medical authorization forms. The provision begins by stating that parents will not be deemed abusive if the county agency investigates and makes a certain determination. This presupposes that the county agency has been made aware of the child's illness, and in sufficient time for it to "closely monitor the child and . . . seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-

term health." A county agency can secure a judicial order of treatment in any case "where harm to the physical or mental health of the child [from non-treatment] is demonstrated." **In re Cabrera, 381 Pa.Super. 100, 108, 552 A.2d 1114, 1118 (1989).**

Thus, parents whose religious beliefs preclude them from authorizing medical care are not abusive under the Child Protective Services Law if, and only if, they timely report the child's illness to the county, so that the county can investigate and take the statutorily mandated actions. In other words, parents who are religiously opposed to medical care have a legal duty either to bring their sick child to a doctor themselves or to ensure that the county agency is promptly informed of the child's illness. The Nixons did neither. As a result, the county agency was never able to investigate and take the statutorily mandated actions, and this provision is therefore inapplicable.

In sum, the religious beliefs of Appellants themselves are entirely irrelevant to this case. This Court must look upon them just as it would parents who failed to secure medical care for their dying daughter because they were simply uncaring. The fact that they had certain religious beliefs did not in any way diminish their legal responsibility.

B. A Minor's Religious Beliefs Do Not Affect Parents' Legal Obligation to Secure Necessary Medical Care.

As noted above, the criminal statutes under which Appellants were convicted make no mention of children's wishes nor of anyone's religious beliefs, and the Child Protective Services Law also says nothing about children's wishes, whether religiously based or otherwise. One can reasonably infer from this silence a legislative judgment not to create an exception to these critical child protective provisions for cases where children express agreement with their parents' religious beliefs. Therefore, to attribute significance to the fact that Shannon Nixon's alleged desire not to receive medical treatment was based upon religious belief, rather than upon some other kind of belief or motive, Appellants would have to argue that minors have a First Amendment right to a religious exemption from the general rule that they must receive medical care when they are seriously ill.

Such an argument would fail. Even adults do not have a First Amendment right to a religious exemption from generally applicable laws mandating that they receive certain forms of healthcare. See **Employment Division v. Smith, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990)** (holding that generally applicable laws that are formally neutral as to religion are not subject to Free Exercise Clause challenge even if they

disparately impact persons with particular religious beliefs); **Jacobson v. Massachusetts, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643 (1905)** (rejecting an adult's Free Exercise Clause objection to mandatory vaccination). So even if minors' espousal of religious beliefs should receive the same weight as the religious convictions of adults, a view no court or legislature in this country has adopted, the Free Exercise Clause would not confer on them a right to refuse medical care that State law otherwise requires them to receive. If the Free Exercise Clause does not require States to create a religious exemption to laws, such as the law prohibiting use of peyote at issue in **Smith, supra**, that are designed in part to prevent adults from harming themselves, then it surely does not require States to create religious exemptions from laws designed to prevent children from harming themselves.

Recognizing a free exercise right of minors to refuse critical medical care would have unacceptable consequences. It would encourage parents with religious objections to medical care to apply heavy pressure on their sick or injured children to express agreement with the parents' beliefs. Parents would have an enormous incentive to do whatever it takes to make their children insist to public authorities that it is really they, the children, who want to refuse treatment

for their disease or injury -- namely, avoiding a substantial jail sentence.

And what good would come of such a rule? Teenagers would be able to effectuate life-threatening choices based on inherited beliefs. Is that such a great good that it should override the good of protecting their basic welfare until they arrive at adulthood, when they will be free to make their own way in life? Courts throughout the country have on many occasions ordered medical care for minors over the objection of parents and over objections of the minors as well. It seems highly unlikely that when those minors reach adulthood they wish that they had suffered permanent impairment, or that they had died, rather than receiving medical treatment contrary to the religious beliefs they held at the time.

In any event, as noted above, Appellants have advanced no claim based on religious freedom, for themselves or for their daughter. Therefore, this Court must look upon Shannon Nixon just as it would upon a sixteen year-old whose parents allege that she decided for some other non-medical reason (e.g., she realized she could never have the career of her dreams) not to receive medical treatment for a serious illness. The Court's decision will necessarily govern situations of that kind as well.

CONCLUSION

One purpose of criminal sentencing is to impress upon persons convicted of crimes the wrongfulness and harmfulness of their actions, so they will take responsibility for what they have done and commit themselves to altering their conduct in the future. The line of argument Appellants have taken in this appeal of their convictions makes clear that they have not accepted responsibility for their choices and actions. That Shannon was the second child the Nixons caused to die unnecessarily makes this even clearer. By rejecting their appeal in no uncertain terms, this Court can send the message to Appellants that they cannot with impunity flout the laws of the Commonwealth and their legal responsibilities as parents.

Therefore, amici curiae Children's Healthcare Is a Legal Duty, Inc.; the American Humane Association, Children's Division; the National Association of Counsel for Children; and the National Exchange Club Foundation respectfully ask that this Court uphold the decision of the Superior Court.

Respectfully submitted:

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